esced in by the English equity judges in the late cases, where the question has arisen. We do not regard it as being of sufficient practical importance in this country, to call for any more extended discussion. But we have been forcibly impressed with the justice and plausibility of the rule contended for, by those who advocate the rights of the children to claim the benefit of their mother's equity from the time she elects to enforce it, and manifests that election by filing a bill for that purpose. We think the equity of the children is sufficiently recognised in the admitted doctrine, that the mother cannot claim the settlement on behalf of herself alone; she must, in her bill, demand the settlement for the benefit of her children, by the marriage, as well the afterborn as those then in existence. There could be no more distinct and unequivocal recognition of the equity of the children, as being to some extent subsidiary to that of the mother; and as we here feel at liberty to follow out the doctrines of equity, as the leading of the principles involved shall indicate, we should certainly prefer the rule laid down by Sir JOHN LEACH, to that which seems finally to have prevailed in the English courts of equity.

I. F. R.

(To be Continued.)

ENGLISH IGNORANCE OF AMERICAN INSTITUTIONS.

We are naturally and justly sensitive as to the opinions expressed by the English Press and leading men in Parliament, in respect to the controversy in which our country is engaged. It requires more forbearance than most men possess, to tolerate the judgments pronounced by a set of supercilious, would-be-leaders of public opinion in England, upon matters concerning the condition and future prospects of our country. But we ought not to be surprised at this, when we remember how utterly ignorant most of their leading men are upon the subject of our government and its institutions. Few people in this country can understand how such ignorance can prevail, or the extent to which it actually does prevail, not merely among the uneducated, but with those who undertake to teach others.

We have an instance of this in the lectures of the distinguished

Mr. Austin, late a Professor of Law in the London University. Few men had a higher reputation for learning in his department than he, and his lectures, published in 1861, were deemed an important addition to the works on jurisprudence.

In his sixth lecture he undertakes to define the different forms of exercising sovereign power in a state, and to illustrate the division of this power under the British Constitution, as it is called, between the king, the aristocracy, and democracy, as represented in parliament.

He maintains that this power of the House of Commons is a trust, imposed by the electoral body whom they represent, but a trust which can be enforced only by *moral* sanctions. If it were otherwise; if the electoral body could bind its representatives by anything like a positive law, limiting that made by the electoral body, the latter would be paramount to that of the law-making power in the government.

We now quote from the language of Professor Austin (p. 205), while pursuing this thought and its illustration: "A law of the Parliament or a law of the commons house, which affected to abrogate a law of the extraordinary and ulterior legislature, would not be obeyed by the courts of justice. The tribunals would enforce the latter in the teeth of the former. They would examine the competence of the ordinary legislature to make the abrogating law, as they now examine the competence of any subordinate corporation to establish a by-law or other statute or ordinance. In the state of New York the ordinary legislature of the state is controlled by an extraordinary legislature, in the manner which I have now described. The body of the citizens appointing the ordinary legislature, forms an extraordinary and ulterior legislature, by which the constitution of the state was directly established, and every law of the ordinary legislature which conflicted with a constitutional law directly, proceeding from the extraordinary, would be treated by the courts of justice as a legally invalid act."

The reader must be a little at a loss to know, what idea Mr. Austin had of what he calls "extraordinary" or "ulterior legislature." It would rather seem that he regarded it as a kind of exercise of ex post facto legislation, whereby the people, at times, might in some way enact a countervailing statute to some statute already enacted by the ordinary legislature, rather than as a fundamental law existing anterior to any act of ordinary

legislation, and by which the validity of such an act is tested by courts of justice expressly clothed with this power.

That he had no very definite or intelligible idea upon the subject, is obvious from what follows, as well as by the vagueness of the proposition itself. "That such an extraordinary and ulterior legislature is a good or useful institution, I pretend not to affirm. I merely affirm that the institution is possible, and that, in one political society, the institution actually obtains."

Here was a learned professor teaching the science of jurisprudence, and the elements and forms of civil government, undertaking to illustrate and explain his propositions to others by referring to American institutions, who had made the remarkable discovery, that in "one political society," viz., New York, they had a something which he called "an extraordinary and ulterior legislature;" while he was careful to say, he "pretends not to affirm it" to be "a good or a useful institution." One would infer that he never had read the Constitution of the United States, or that of any state in the Union, or looked into a volume of the American Reports, in scarce one of which the distinction between a constitution or a fundamental law and an ordinary act of legislation is not recognised and explained, and the extent to which the judiciary can pass upon the legality of the acts of legislation, defined.

And yet this learned pundit was really a profound jurist, so far as the English law was concerned, and had, moreover, in order to prepare himself for the place he had been called to fill, spent six months or more in Germany in studying jurisprudence, and was, withal, a man of various learning and scholarlike attainments, and had never studied our Constitution.

What wonder then, that we read in the columns of the English press, and in the debates of Parliament, such crude statements and speculations about the questions at issue between the loyal states and the leaders of the rebellion. The simple truth is, five out of seven of the public men of England neither wish to know, nor will they know, anything about our form of government or the workings of our institutions. They know that John Bull is positively right in everything, and whatever state differs from him, must be wrong, and that it is worse than folly to undertake to master what they are sure cannot be right. Especially is this true of the United States. A nation, without a king, and an established church, without a class of born gentlemen, without landed monopolies, and the benefit of family settlements and

hereditary ranks, must, in the judgment of an English snob, be too low in the scale of civilization, to deserve to have its laws studied, or its constitutions understood. And hundreds of the profession, practising in courts in which the writings and opinions of Kent and Story are quoted with respect, have never troubled themselves to inquire, as to the constitution or character of the courts of whose learning and ability these were but fair exponents. We might draw further illustrations of the truth of what we have said, from the history of the late-renowned *Alexandra Case*, and the speeches in the House of Commons upon neutrality laws, as presented by the able criticisms of Mr. George Bemis, of Massachusetts, and others recently published. But our remarks have already become extended beyond their original design, and we content ourselves with the instance of Mr. Austin, one of the fairest and least prejudiced of English jurists, who have made our form of government the subject of comment when discussing jurisprudence as a science. E. W.

RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania.

LOCKHART & FREW *vs.* LICHTENTHALER.

1. Where a passenger on a car or vessel is injured by the concurrent negligence of his carrier and a third person, his remedy is solely against his carrier.

2. If however the negligence of the third party was the sole *proximate* cause of the injury, and there was negligence of the carrier only in a general sense, but which did not contribute to the injury, the third party is responsible.

3. Whether the defence of concurrent negligence can be heard without being specially pleaded, *quære.*

The opinion of the court was delivered by

THOMPSON, J.—This was an action against the defendants below, by the widow and children of John Lichtenthaler, under the Acts of Assembly of 1851–55, to recover damages for occasioning his death by negligence. The allegations in substance are, that the workmen or servants of the defendants in and about their business, so carelessly and negligently conducted themselves, in placing certain oil-casks so near the track of the Allegheny Valley Railroad, that a portion of the train of cars, on which the